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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 8, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 06HD-005

HAWAII

Amend (48) General Leases Awarded for Residential Purposes, Pursuant to Act 314, Session Laws of Hawaii 1991, as Amended, Covering Portions of Government Lands at Kikala and Keokea, Puna, Hawaii, Tax Map Key: 3rd/ 1-2-43: 1-69

LEGAL REFERENCE:

Section 171-6, 171-7, 171-16, 171-59 and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of the Kikala-Keokea Residential Subdivision situate at Kikala and Keokea, Puna, Hawaii, identified by Tax Map Key: 3rd/ 1-2-43: 1-69, formerly Tax Map Key: 3rd/ 1-2-07: portion of 02, as shown on the attached map labeled Exhibit A.

AREA:

89 acres, more or less, consisting of sixty-seven 1-acre residential lots, four-acres for Park purposes, eleven-acres for open space, and seven-acres for roadways.

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: Ag-3A

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Various General Leases as identified. (Exhibit B)

CHARACTER OF USE:

The lessee shall use or allow the premises leased, to be used solely for residential purposes as the lessee's principal domicile, provided that the following additional uses shall be permitted:

1. Storage of boats, fish catch, fishing nets and other fishing related implements;
2. Raising and keeping of small livestock and poultry for subsistence purposes only, except that the raising of swine (also called hogs and pigs) on the leased premises shall be prohibited; and
3. Cultivation of farm and agricultural crops for subsistence purposes (or home consumption only and not for sale), including herbal plants.

LEASE TERM:

Sixty-five (65) years, subject to renewal by mutual agreement, commencing on January 1, 1997 and expiring on December 31, 2061. First rental reopening is scheduled for January 1, 2022.

ANNUAL RENT:

Nominal rent of \$132.00 per annum, payable in advance, in semi-annual installments.

RENTAL REOPENINGS:

The annual lease rental then in effect, shall be re-determined and reopened at the end of the twenty-fifth (25th) and forty-fifth (45th) years of the lease term by independent appraisers whose services shall be contracted by the Lessor. Determination of the annual lease rental for any reopening period shall be based on twenty percent (20%) of the fair market rental at the time of reopening.

PERFORMANCE BOND:

Twice the annual rental amount.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Pursuant to Act 314, SLH 1991, this project is exempt from the requirements of Chapter 343, Hawaii Revised Statutes, relating to Environmental Impact Statements, and the requirements of Chapter 200, Title 11, Hawaii Administrative Rules of the Department of Health, relating to Environmental Impact Statement Rules. Based on our interpretation of Act 314, SLH 1991, written comments from the general public, concerned citizens and government agencies were welcomed, but such comments were not incorporated nor mitigated in a final environmental assessment, as none was issued.

Although this project is exempt from all State environmental requirements, Land Division staff in October of 1993 completed and filed an environmental assessment (EA) for this residential project with the Office of Environmental Quality Control (OEQC). A notice of EA's availability for review by the general public was published in the October 8, 1993 edition of the OEQC Bulletin. The purpose of the notice's publication was to disseminate information regarding the project to the general public. Based on our interpretation of Act 314, SLH 1991, written comments from the general public, concerned citizens and government agencies were welcomed, but such comments and concerns were not incorporated nor mitigated in a final environmental assessment, as none was issued.

BACKGROUND:

Act 314, Session Laws of Hawaii 1991, as amended by Act 172, Session Laws of Hawaii 1993, and further amended by Act 81, Session Laws of Hawaii 1994, authorized the Department of Land and Natural Resources to negotiate and enter into long-term leases to persons living in Kalapana, District of Puna. Intended for those who were dispossessed or displaced as a result of the volcanic eruption on the Island of Hawaii, which began on January 3, 1983 and also met the qualifications under Section 13D-3(b), Hawaii Revised Statutes. The authority granted by Act 314, SLH 1991 expired when leases have been negotiated and recorded in the Bureau of Conveyances or on December 31, 1995, whichever occurs first.

The State-owned, public lands eligible for long-termed leases under Act 314, SLH 1991 are limited to no more than 150 acres situate at Kikala and Keokea, Puna District, Island of Hawaii. This area is adjacent to and mauka of the Kalapana-Kapoho Beach Road, located between the 20 and 21 mile marker post, previously identified as Tax Map Key: 3rd/ 1-2-07: portion of 2. Upon successful subdivision of Parcel 2, the Kikala-Keokea Subdivision project area is now identified as Parcels 1 through 69 of Tax Map Key: 3rd/ 1-2-43. Act 314, SLH 1991 stipulated that each residential lot created and leased to a qualified person should contain a minimum land area of one (1) acre. The creation and development of the Kikala-Keokea Residential Subdivision, under the provisions of the Act, exempted this project, "from all statutes, ordinances, charter provisions, and rules of any governmental agency related to zoning and construction standards for subdivisions, the development and improvement of land, and the construction of units thereon; provided that the DLNR finds the project is consistent with the purpose and intent of this Act and meets minimum requirements of health and safety." The "open" areas included in the subdivision plans were created for two reasons; 1) to serve as a buffer between the proposed residential lots and a habitat of an endangered species of flora, and 2) as a safety precaution to avoid construction of improvements over a network of lava tubes located in the vicinity.

At its meeting of December 16, 1994, Item F-3, the Board of Land and Natural Resources authorized the awarding of direct residential leases pursuant to Act 314, Session Laws of Hawaii 1991, covering a portion of government lands of Kikala and Keokea, Puna, Hawaii, identified as Tax Map Key: 3rd/ 1-2-07: portion of 2.

At its meeting of November 17, 1995, Item F-9, the Board approved to amend its prior Board Action of December 16, 1994, Item F-3, to revise or delete certain terms and conditions contained in the residential lease form. These amendments included; 1) the deletion of lease requirements regarding performance bond, fire insurance, and extended coverage insurance; 2) that designated successors of the lease be a spouse, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson, or granddaughter of the Lessee, and 3) Formation of a Kikala-Keokea Residential Community Association within ninety days of the commencement date of the lease. That the Association shall be formed as a non-profit corporation, responsible for the management, maintenance, repair, protection, and preservation of the subdivision's roadways, drainage ways, and road right-of-ways, assuming all liability for their use.

At its meeting of November 20, 1998, Item D-6, the Board authorized Land Division to instruct Fiscal Office to stop rental billings of the 48 general leases and to amend the lease document to reflect a "new" commencement date to be determined by the Chairperson. Due to problems/ delays experienced in obtaining funding for construction of infrastructure, it was recommended that billing of the lease rent be postponed at such time the Lessees are able to enter and begin occupancy of the leased area.

ANALYSIS:

Presently, the Kikala-Keokea Residential Subdivision is closed. Delays experienced in constructing the road infrastructure were due to the lack of available funding for the project. With OHA's assistance in funding, construction of road infrastructure that commenced in 2004 was completed at the end of March 2006. At its meeting of June 9, 2006, Item D-2, the Board approved the sale and dedication of the subdivision road right-of-ways and water system over to the County of Hawaii. Due to the completion of the roadways and water line infrastructure, the Hawaii Electric Light Company and Hawaiian Telcom, Inc., is now commencing with its construction and installation of the utility poles and distribution lines within the Subdivision. If all goes as planned, all subdivision infrastructure should be completed and dedicated over to the County of Hawaii by end of November 2006. Lessees would then be permitted to enter the Subdivision and to commence with construction of their respective residences. Staff is proposing that the Billing of the lease rent to commence on January 1, 2007. Because the subdivision roadways and infrastructure will be dedicated to the County of Hawaii, the Kikala-Keokea Community Association will no longer be required to manage, maintain, repair and assume liability over the subject roadways and infrastructure. As a result, staff recommends an amendment to release the Association of its responsibility over the subdivision roadways.

Through the years, staff has noted that Lessees of the Kikala-Keokea Residential Leases were experiencing increased difficulty in acquiring the required insurance policies from only insurance companies licensed to do business in Hawaii. Most, if not all of these insurance companies are no longer willing to include the State of Hawaii as an "Additional Insured" on these types of policies. Therefore, in attempts to assist the Lessees of this situation, staff would like to recommend that the following insurance requirements be momentarily suspended: 1) a need to acquire a policy from only insurance companies licensed to do business in Hawaii, and 2) a need to have the State of Hawaii be named as an Additional Insured on the policy. However, that these requirements would be reinstated and enforced again, should the insurance companies underwrite these types of policies in the future. Staff is of the belief that it is better to have some kind of coverage on the property, as opposed to having no coverage at all. That should staff not be granted authorization to postpone enforcement of the current requirements for insurance in attempts to assist our Lessees, staff will have no choice but to submit notices of default and to eventually cancel all the Kikala-Keokea Residential Leases not in compliance. In so doing, the State would have failed to carry out the intent and purpose of Act 314 to properly relocate and provide long termed residential leases to the qualified residents displaced by the 1983 Kalapana lava flow.

Since the County of Hawaii would have jurisdiction over the road infrastructure, the requirement to obtain general liability insurance would no longer be beneficial to our Lessees. Instead, a requirement to acquire a homeowner's policy would be more practical.

Additionally, due to the unforeseen delays experienced in developing this residential subdivision, construction requirements included in the lease are unrealistic and impossible to meet. One of these requirements was that, construction of a dwelling be completed within five years from commencement date of the lease, with time extensions in six-month increments not exceeding one year beyond the five-year time limit. As the time frames for these requirements have long pass, Staff proposes to amend this requirement by granting a time extension for construction till December 31, 2012. This relates to five years from the January 1, 2007, commencement date of rental billing.

RECOMMENDATION: That the Board:

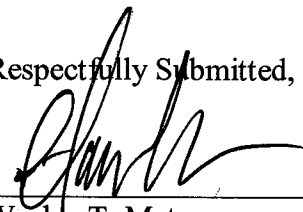
- A. Authorize Land Division to instruct Fiscal Office to commence with billing of lease rent of the 48 general leases of the Kikala-Keokea Residential Subdivision on January 1, 2007;
- B. Amend lease terms and conditions of the forty-eight General Leases awarded, pursuant to Act 314, Session Laws of Hawaii 1991, relating to:

1. Rent:
For the First ten (10) years of the lease, no rent will be charged. That for the next fifteen (15) years, commencing on January 1, 2007, the sum of One Hundred Thirty-Two and No/100 Dollars (\$132.00) per annum.
2. Liability Insurance:
That the requirements to acquire insurance be modified to: a) allow Lessees to obtain a policy or policies from any insurance company of their choosing and not just from those licensed to do business in the State of Hawaii, b) that the State of Hawaii need not be named as an "Additional Insured" on the policy, until such time those policies again become available, and c) that a homeowner's policy be required, instead of the current need for a commercial general liability policy.
3. Improvements:
That the provisions concerning improvements be modified to: a) delete the allowance for a rent increase as a result of construction of improvements; and b) inserting "and/or Lien Holder of Record," in addition to the Lessor as the owner of improvements at the expiration or termination of the lease;
4. Mortgage:
That the following modifications relating to mortgage be inserted: a) That "Farmers Home Administration," as Mortgagee, be replaced with "USDA Rural Housing Service", the updated name of the federal agency, b) That the "Modification to State of Hawaii Department of Land and Natural Resources, General Lease," as requested by USDA Rural Housing Service be approved as an amendment to the leases of borrowers approved for USDA Rural Housing Services loans;
5. Construction requirement:
 - a. That construction of a dwelling shall be completed by December 31, 2012.
 - b. That in accordance with State of Hawaii Department of Health, In the Matter of Application for Variance for: Na Ohana O Kalapana Association, Tenants Association for Kikala-Keokea Subdivision, Individual Wastewater System (IWS), Docket No. 97-VWW-04, DECISION AND ORDER, dated January 29, 1999, Pursuant to Chapter 3432D, Hawaii Revised Statutes, and Chapter 62 of Title 11, Administrative Rules and based upon the application and staff review, the Variance Request from the provisions of Chapter 11-62, Section 11-62-05(c) and 11-62-31.1(a)(1)(B)" was **"GRANTED** with the following provisions:
 - 1) Only one cesspool will be allowed per lot;
 - 2) No further subdivision of lots will be allowed;

- 3) All future dwellings or buildings generating wastewater on the lot shall meet the Department of Health's current requirements regarding wastewater treatment and disposal;
 - 4) If a drinking water source is developed within 1000 feet of the subdivision, any wastewater system on a lot falling within the 1000 foot radius of the drinking water well shall be upgraded to an aerobic unit with absorption trenches or beds;
 - 5) The development shall connect to a municipal sewer system should it become available to the area. Only one cesspool will be allowed per lot.
 - 6) A covenant to the deed or lease agreement for each of the lots in the subdivision shall contain the applicable provisions 1 through 5 stated above;
 - 7) Plans for any IWSs built in the subdivision shall be submitted to the Wastewater Branch for review and approval. That the IWS shall be approved by the Director, in writing, before being placed into operation.
6. Formation, purpose and responsibility of the Kikala-Keokea Residential Community Association (Association):
- a. Delete conditions requiring the Association to assume responsibility and liability for the use, management, maintenance, repair, protection, and preservation of the Kikala-Keokea Residential Subdivision's roadways, drainage ways, road right-of-ways, and infrastructure upon its successful dedication to the County of Hawaii.
- C. Authorize the granting of utility easements as necessary to the Hawaii Electric Light Company (HELCO) and Hawaiian Telcom, Inc. (HTI), subject to concurrences from respective Lessees of affected parcels;
1. Amend descriptions of the respective affected leases that would contain a HELCO and/or HTI utility easement.
- D. Review and approval by the Department of the Attorney General; and
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

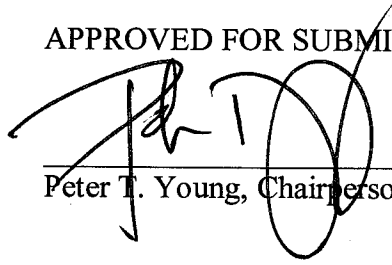
September 8, 2006

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson



TAX MAP KEY	NAME	GL NO./ SECTION
3 rd / 1-2-43:01	KAAWALOA , Samson K.	GLS-5401/ Kalapana
1-2-43:02	Vacant	
1-2-43:03	DOMINGO , Romero & Brenda K.P.	GLS-5403/ Kalapana
1-2-43:04	DIKITO , Leroy & Betty Ann	GLS-5404/ Kalapana
1-2-43:05	OKAMOTO , Yvonne K.	GLS-5405/ Kalapana
1-2-43:06	PAVAO , Leola	GLS-5406/ Kalapana
1-2-43:07	Vacant	
1-2-43:08	NII-KAAWALOA , Jerilyn	GLS-5408/ Kalapana
1-2-43:09	Vacant	
1-2-43:10	ALMEIDA , Alexander P. & Antoinette K.	GLS-5410/ Kalapana
1-2-43:11	WRIGHT , Helena K.	GLS-5411/ Kalapana
1-2-43:12	MAKUAKANE , Tarsha L.	GLS-5412/ Kalapana
1-2-43:13	WAIAU , Nicole M.E.	GLS-5413/ Kalapana
1-2-43:14	HAUANIO , Mathew Sr.	GLS-5414/ Kalapana
1-2-43:15	MAHI , Charles III	GLS-5415/ Kalapana
1-2-43:16	Vacant	
1-2-43:17	HAUANIO , Gilbert W. Jr.	GLS-5417/ Kalapana
1-2-43:18	AKIONA , Anthony A.	GLS-5418/ Kalapana
1-2-43:19	Vacant	
1-2-43:20	PERALTO , Samantha V.K.V.	GLS-5420/ Kalapana
1-2-43:21	Vacant	
1-2-43:22	MATTOX , Tari N.	GLS-5422/ Kalapana
1-2-43:23	MOULDS , Julie L.L.	GLS-5423/ Kalapana
1-2-43:24	Vacant	
1-2-43:25	KAAWALOA , Amy M. & Andrea M.	GLS-5425/ Kalapana
1-2-43:26	Vacant	
1-2-43:27	Vacant	
1-2-43:28	Vacant	
1-2-43:29	ROBERTS , Pualililehua K.	GLS-5429/ Kalapana
1-2-43:30	PELEIHOLANI , Edeen O.K.	GLS-5430/ Kalapana
1-2-43:31	PELEIHOLANI-BLANKENFELD , Francine V.M.	GLS-5431/ Kalapana
1-2-43:32	ROBERTS , Puna-o-Makalaaupoe	GLS-5432/ Kalapana
1-2-43:33	KAAWALOA , William Kaleo Jr.	GLS-5433/ Kalapana
1-2-43:34	SANTOS , Stephen N.	GLS-5434/ Kalapana
1-2-43:35	AKEN , Lei Mamo K.	GLS-5435/ Kalapana
1-2-43:36	KAAWALOA , William Sr. & Minnie H.E.	GLS-5436/ Kalapana
1-2-43:37	KAAWALOA , Gwendolyn P.	GLS-5437/ Kalapana
1-2-43:38	KAAWALOA , Stanley K.	GLS-5438/ Kalapana
1-2-43:39	CORDERO , Anna & James J.	GLS-5439/ Kalapana
1-2-43:40	MOULDS-CARR , Yuk Lin Maile	GLS-5440/ Kalapana

3 rd / 1-2-43:41	WRIGHT, Selisa N.K.	GLS-5441/ Kalapana
1-2-43:42	Vacant	
1-2-43:43	PELEIHOLANI, Julia K.	GLS-5443/ Kapoho
1-2-43:44	Vacant	
1-2-43:45	KELIHOOMALU, Robert Sr.	GLS-5445/ Kapoho
1-2-43:46	KAHILIHWA, David	GLS-5446/ Kapoho
1-2-43:47	ROBERTS, Oliver Kaipo & Maise Kaaumoana	GLS-5447/ Kapoho
1-2-43:48	KEALOHA, Darryl I.	GLS-5448/ Kapoho
1-2-43:49	PELEIHOLANI, Lissa-Ann	GLS-5449/ Kapoho
1-2-43:50	PELEHOLANI, Hayward K.	
1-2-43:51	KUANONI, Pearl H.	GLS-5451/ Kapoho
1-2-43:52	HAUANIO, Gilbert W. Sr. & Adeline K.	GLS-5452/ Kapoho
1-2-43:53	HAUANIO, Robin A.	GLS-5453/ Kapoho
1-2-43:54	AINA, Michael A.	GLS-5454/ Kapoho
1-2-43:55	PAU, Teddy	GLS-5455/ Kapoho
1-2-43:56	PAI, Mary K.	GLS-5456/ Kapoho
1-2-43:57	Vacant	
1-2-43:58	Vacant	
1-2-43:59	HAUANIO, Clarence H. & Lehua	GLS-5459/ Kapoho
1-2-43:60	HAUANIO, Sabrina M.	GLS-5460/ Kapoho
1-2-43:61	Vacant	
1-2-43:62	Vacant	
1-2-43:63	AKUI, Gladys B.	GLS-5463/ Kapoho
1-2-43:64	Vacant	
1-2-43:65	PAO, Clayton Z.R.	GLS-5465/ Kapoho
1-2-43:66	Vacant	
1-2-43:67	Vacant	
1-2-43:68	PARK SITE (4-acres)	Kapoho
1-2-43:69	OPEN SPACE (11-acres)	Kapoho

67 lots: 48 leased -19 vacant

EXHIBIT B